

Remarks

Claims 1-9 and 12-16 are presently pending. Claims 10, 11 and 17-20 have been withdrawn from consideration. By this paper, claims 1 and 12-14 have been amended, and claims 2, 7-9 and 15 have been canceled. Claims 3-6 stand objected to as being dependent upon rejected base claims 1-2 and have been amended herein to depend upon amended claim 1.

Claim 1 stands rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,799,592 to Reynolds. Applicant's invention is to be distinguished from that of Reynolds by the lack of any requirement for attachment to a lower leg. Reynolds explicitly specifies attachment to a lower leg in independent claims 1 and 4, where pertinent phrases read, "a lower leg member including a support surface for supporting the user's lower leg part." Furthermore, in column 3, line 65 through column 4, line 2, the specification by Reynolds states, "The lower leg member 29 preferably includes attachment means 63 such as one or more flexible, adjustable strap assemblies 65 extending between the side plates 53, 55 for passing over the back of the user's lower leg 19 to secure the frame 51 to the user's lower leg 19." Indeed, the Applicant's invention may be used by individuals who have no lower leg, such as amputees. Applicant has amended claim 1 to clarify this distinction.

Claim 7 stands rejected in light of Reynolds and is herein canceled.

Claim 9 also stands rejected as being anticipated by Reynolds. The effect of claim 9 is here incorporated into the amended claim 1 for clarification of the Applicant's

invention as being limited to protection of a knee by transfer of load to an adjoining thigh in keeping with the restriction of 10/19/2004. Claim 9 is herein canceled.

Claims 12 and 14, which also stand rejected as being anticipated by Reynolds, have been amended to clarify the distinction over Reynolds that the Applicant's methods of use do not involve any portion of a body below a knee. The terms of claim 15 have been incorporated into the amended claim 14, and claim 15 is canceled. Claim 16 is amended to show proper dependency upon the amended claim 14.

Claim 8 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Reynolds in view of U.S. Patent No. 4,599,748 to Garcia. Claim 8 is canceled.

Claim 2 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Reynolds in view of U.S. Patent No. 5,300,016 to Marlatt. Claim 2 is canceled.

The Applicant respectfully points out that each of the patents to Garcia and Marlatt require attachment to a leg below the knee. Indeed, Garcia requires in each of his independent claims 1, 5-7, 9 and 10 a "means for releasably attaching the second member to the leg of the wearer at a location below the knee." Looking to Marlatt, both independent claims 1 and 26 describe "A prosthetic device for attaching to and supporting a person's body utilizing the person's knee, upper leg or thigh, and hips for stability and for supporting the person's lower leg in a nonuse or nonweight-bearing position." Furthermore, Marlatt's Abstract (at lines 4-5) refers to a means "for supporting the knee in a weight-bearing position."

In the final paragraph of item 7 of the Office Action, the Examiner refers to the "length adjustment means, as taught by Marlatt, to provide a device that can accommodate person's [sic] of different height." The Applicant contends that the primary function of

the height adjustment provided by Marlatt is to compensate for the length of a user's lower leg. In contrast to Marlatt, the adjustment provided by the Applicant's invention pertains to the relatively short distance between the protected knee area and the points of attachment on the supporting thigh.

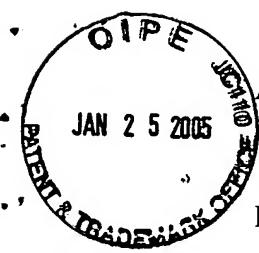
Conclusion

Applicant has made every effort to comply with all points raised in the Office Action, and submits that the claims are now patentable over the citations in the Office Action. Applicant therefore submits that this application is now in condition for allowance and respectfully requests such action. The Examiner is encouraged to telephone the undersigned if any issues remain.

Respectfully submitted,



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Art unit: 3743

In re application of:

Bernadette Jestrabek-Hart

Confirmation No. 9870

Filed: June 19, 2003

For: **Orthopedic Device Allows Kneeling without Contact to the
Knee and Protects Other Joints**

Examiner: Amanda Flynn Wieker

Agent Docket No.: 3063

Customer No.: 035459

This correspondence includes:

Response to Restriction Requirement (ten pages); and
postcard.

CERTIFICATE OF MAILING

I hereby certify that this correspondence, and attachments, if any, will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to "Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450" on the date below.

Date: January 21, 2005

Agent's Signature: Robert A. Frohwerk
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